

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

**MICHAEL JOSEPH DAVIS,**

**Plaintiff,**

**v.**

**UNITED STATES OF AMERICA,  
et al.,**

**Defendant(s).**

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**1:11CV190**

**ORDER AND RECOMMENDATION**  
**OF UNITED STATES MAGISTRATE JUDGE**

Plaintiff, a federal prisoner, has submitted a motion for return of property pursuant to Fed. R. Crim. P. 41(g). Such a motion filed after the completion of criminal proceedings is a civil action subject to the fee provisions of 28 U.S.C. § 1915. *See United States v. Jones*, 215 F.3d 467 (4th Cir. 2000). Venue for such a motion is proper in the district where the seizure occurred. *See United States v. Garcia*, 65 F.3d 17 (4th Cir. 1995). Plaintiff has failed to submit either the \$350.00 filing fee or an application to proceed *in forma pauperis*. This motion should, therefore, be dismissed without prejudice to Plaintiff submitting his action on the proper forms along with either the \$350.00 filing fee or a completed application to proceed *in forma pauperis*. To assist Plaintiff, the Clerk will send Plaintiff the Motion for Return of Property forms, instructions and an application to proceed *in forma pauperis*.

*In forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation.

**IT IS THEREFORE ORDERED** that *in forma pauperis* status is granted for the sole purpose of entering this Order. The Clerk is instructed to send Plaintiff Motion for Return of Property forms, instructions, an application to proceed *in forma pauperis*, and a copy of pertinent parts of Fed. R. Civ. P. 8 (i.e. Sections (a) & (d)).

**IT IS RECOMMENDED** that this action be filed and dismissed *sua sponte* without prejudice to Plaintiff filing a civil complaint, on the proper Motion for Return of Property forms, which corrects the defects cited above.

/s/ P. Trevor Sharp  
United States Magistrate Judge

Date: March 16, 2011